

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

TREVOR KEVIN BAYLIS,

Plaintiff,

v.

VALVE CORPORATION,

Defendant.

No. 2:23-cv-01653-RSM

**REPLY IN SUPPORT OF
MOTION TO REFER
COPYRIGHT REGISTRATION
QUESTIONS TO THE
REGISTER OF COPYRIGHTS
AND FOR STAY OF
PROCEEDINGS**

NOTED ON MOTION
CALENDAR:
April 19, 2024

I. INTRODUCTION

Baylis' Response to Valve's Motion to Refer Copyright Registration Questions to the Register of Copyrights and for Stay of Proceedings ("Response") and the exhibits to his declaration conclusively demonstrate that he knowingly included inaccurate information in his application for copyright registration. In light of his Response and the undisputed facts set forth in Valve's Motion to Refer Copyright Registration Questions to the Register of Copyrights and for Stay ("Motion"), the Court's referral of the matter to the Register of Copyrights is mandatory. In addition, Baylis' Response does not oppose Valve's request for

1 an immediate stay, and Valve respectfully requests that a stay be granted, particularly in light
2 of Baylis' numerous meritless filings with this Court.

3 Baylis' declaration in support of his Response shows that on September 26, 2023, the
4 United States Copyright Office emailed him for additional information regarding his
5 application for copyright registration. Dkt. No. 49-2 (Declaration of Trevor Baylis, Ex. B).
6 The Copyright Office directly asked Baylis about the basis of his alleged ownership,
7 explaining that in the context of motion picture copyrights "[t]he claimant is the person(s) or
8 organization that owns all rights in the motion picture" and requesting that he "reply and give
9 us complete and accurate authorship information." *Id.* at BAYLIS_1.

10 In response to these direct questions regarding the validity of his copyright claim,
11 rather than provide the Finnish court decision (the "Judgment") expressly determining he had
12 not created any copyrightable work and held no copyright to the *Iron Sky* movie, Baylis
13 instead responded to the Copyright Office:

14 **I do have a high degree of erudition regarding copyright law and I**
15 **understand your quandary about work for hire regarding films in**
16 **general.**

17 And he went on to misrepresent that:

18 **[T]he application I have made is as accurate as it can be (other than [sic]**
19 **the band Laibach which has now been excluded).**

20 *Id.* (emphasis added). Nowhere did Baylis mention the Judgment, or even acknowledge its
21 existence.¹

22 Baylis' Response does not dispute that Valve has alleged the elements required for
23 referral to the Register of Copyrights under 17 U.S.C. § 411(b)(2). Nor does Baylis deny that
24 when he applied for a U.S. copyright in the entire film *Iron Sky*, he was fully aware that a
25

26 ¹ Notably, Baylis' Exhibit B refers to other correspondence between him and the Copyright Office, which he has not provided to the Court in his filings (or to Valve at all).

1 Finnish court had already ruled against him on his copyright ownership claims and that he
2 omitted that information from his copyright application.

3 Instead of denying his misrepresentations and omissions, Baylis devotes his Response
4 to his disagreement with the Judgment, which only highlights Baylis' knowing and egregious
5 behavior. The Judgment ruled conclusively that Baylis holds no copyright in *Iron Sky*. Baylis
6 knowingly failed to apprise the Copyright Office of the Judgment, despite it being directly
7 responsive to the Copyright Office's inquiry. Because these facts are not in dispute, referral
8 to the Register of Copyrights is mandatory.

9 II. FACTS

10 Baylis emailed with U.S. Copyright Office Supervisory Registration Specialist,
11 Saskia Florence ("Florence") as part of his copyright application process. Dkt. 49 at ¶ 2; Dkt.
12 No. 49-2 at BAYLIS_1. In response to Baylis' application, Florence asked about other co-
13 authors of *Iron Sky*, explaining that films usually have multiple authors, such as producers,
14 directors, writers, camera operators, editors, etc. *Id.* She explained that if the authors' work
15 were a work for hire, then Baylis should provide the name of the employer, as the employer
16 could be the legal copyright owner. *Id.* She further explained that if the authors' work was
17 not made as a work for hire, then Baylis should provide the names and roles of all the other
18 authors. *Id.* She stated that the Copyright Office was seeking from Baylis "complete and
19 accurate authorship information" and explained to him that the claimant for the application
20 should be "the person(s) or organization that owns all rights in the motion picture." *Id.*

21 In response, Baylis did not even mention the Finnish court's determination that
22 neither he nor the other animators own any copyright in *Iron Sky*. Instead, Baylis directly
23 misrepresented that his application was "as accurate as it can be." *Id.* at BAYLIS_2. He then
24 offered his own analysis and interpretation of what he believes copyright law should be and
25 concluded, based on his own interpretation and directly contrary to the Judgment, "***Thus the***
26 ***3D artist remain [sic] authors of the film to complete the chain of title!***" *Id.* at BAYLIS_3.

(emphasis in original). Based on Baylis’ misrepresentations and omissions, Florence approved Baylis’ copyright registration for *Iron Sky*. *Id.* at BAYLIS_4.

III. ARGUMENT

A. Baylis Does Not Contest That He Knowingly Failed to Disclose the Adverse Judgment to the Copyright Office.

Baylis does not dispute that referral to the Register of Copyrights is mandatory if Valve has alleged that (1) Baylis submitted inaccurate information to the Copyright Office (*i.e.*, the material omission of the Judgment), and (2) the inaccurate information was submitted with knowledge that it was false (*i.e.*, Baylis was fully aware of the existence of the Judgment when he failed to submit it to the Copyright Office). *See, SellPoolSuppliesOnline.com LLC v. Ugly Pools Az. Inc.*, No. CV-15-01856-PHX-BSB, 2017 WL 6420464, at *9 (D. Ariz. June 9, 2017) (“[C]ourts that have considered § 411(b) agree that when there is a question regarding the accuracy of the information contained in a registration, the court’s referral of the matter to the Register of Copyrights under § 411(b)(2) is mandatory.”) (collecting cases).

Baylis does not dispute that Valve has alleged these factors. Nor does Baylis dispute that he failed to inform the Copyright Office of the Judgment or that he was fully aware of that ruling when he omitted it from his registration application. To the contrary, his Response provides further evidence of his knowing and intentional misrepresentations. Flouting the Copyright Office’s request for “complete and accurate” information regarding authorship of *Iron Sky*, Baylis omitted any mention of the Judgment that determined that Baylis and the other animators’ work on *Iron Sky* was not sufficient to qualify for copyrights in either the film or the animated works in the film. Dkt. 49 at ¶ 2, Dkt. No. 49-2 at BAYLIS_1-4. Instead, despite being fully aware of the Judgment, Baylis provided the Copyright Office with only his own interpretation of copyright law, which directly contradicts the Judgment – *i.e.*, Baylis’ disproven belief that the animators on *Iron Sky* “remain authors of the film to complete chain of title.” *Id.* at BAYLIS_3.

1 Rather than dispute the core issue – his omission of the Judgment from his application
 2 and correspondence with the Copyright Office – Baylis’ Response merely offers irrelevant
 3 arguments about his own personal disagreement with the Judgment. Response at 4-9. Baylis’
 4 disagreement with the Judgment does not excuse his failure to disclose it in his copyright
 5 application or his correspondence with the Copyright Office. Whether or not he agrees with
 6 it, the decision is final², and pursuant to the Berne Convention, is determinative and must be
 7 honored in the United States. *See* Motion at 8.

8 Baylis’ claim that the Finnish decision does not address moral rights is likewise
 9 unavailing, irrelevant and misapprehends U.S. law. While the Visual Artists Rights Act of
 10 1990, 17 U.S.C. § 106A (“VARA”) recognizes some limited moral rights in certain
 11 enumerated visual arts, it expressly excludes motion pictures from moral rights protection.
 12 *See, e.g., Garcia v. Google, Inc.*, 786 F.3d 733, 746 (9th Cir. 2015) (motion pictures are
 13 specifically excluded from moral rights protection). The issue of moral rights is a red herring
 14 and irrelevant to Baylis’ U.S. copyright application. Baylis cannot, as a matter of law, claim
 15 U.S. copyrights in the film *Iron Sky* on the basis of moral rights. And the Copyright Office
 16 could not and did not grant registration on that basis.

17 Notably, Baylis does agree that Finnish court decisions should be considered in his
 18 copyright application. However, Baylis would have the Court believe that the Copyright
 19 Office should be informed of dicta in his Finnish unemployment proceedings and be misled
 20 about the existence of his Finnish copyright proceedings. Response at 10 (“In regards to ‘res
 21 judicata effect to foreign judgments on the basis of comity’, A [*sic*] US court should give
 22 credence to Judge Kulmala in Baylis v. Troll VFX L 15/32468 . . .”). Baylis’ argument that
 23 a partially-quoted unemployment proceeding could provide the Copyright Office with better
 24

25 ² Baylis appealed the judgment, and leave to appeal was denied on October 29, 2018, with the trial court
 26 judgment upheld in full. Dkt. 44-5 (Declaration of Jonah Harrison, Ex. E).

1 guidance than the Judgment (which directly addressed Baylis' copyrights in *Iron Sky*), and
 2 that he has the right to determine which information the Copyright Office receives is
 3 disingenuous and wrong. The Copyright Office is entitled to all material information relating
 4 to Baylis' application for a U.S. copyright in *Iron Sky*. This is particularly true for the final
 5 adverse Judgment, decided upon a full evidentiary record in a proceeding in which Baylis
 6 participated, that found that Baylis holds no copyright in *Iron Sky* or in its animated parts.
 7 Baylis' argument to the contrary merely highlights the intentionality of his actions.

8 **B. Baylis Does Not Contest the Request for a Stay**

9 Baylis does not oppose Valve's request for a stay. As discussed in Valve's Motion, a
 10 stay is appropriate given the significant impact the Register's response will have on this case
 11 and the likelihood that the Register's response will lead to a dismissal. Since Valve filed its
 12 Motion, the need for a stay pending the Register's response has become more acute. Over the
 13 last two months, Baylis has served (and filed with this Court) five (5) separate sets of
 14 Requests for Admission on Valve containing a total of 36 requests, many of them for
 15 admission of legal conclusions. *See* Dkt. Nos. 27, 28, 31, 37 and 38. And since Valve filed
 16 the Motion, Baylis has also filed two separate meritless Motions to Strike within days of each
 17 other. Dkt. Nos. 47 and 50. Baylis will continue to flood Valve and the Court with motions
 18 and discovery and needlessly waste judicial and party resources unless this matter is stayed
 19 pending the Register's response. While Valve may later choose to address these actions
 20 through requests for relief under 28 U.S.C. § 1927 and potentially Fed. R. Civ. P. 11, at this
 21 time, the unopposed stay Valve has requested would save judicial and party resources.

22 **IV. CONCLUSION**

23 For the reasons set forth above and in Valve's Motion, Valve respectfully requests
 24 that this Court issue a request to the Register of Copyrights pursuant to 17 U.S.C. § 411(b)(2)
 25 to determine whether the inaccurate statements and omissions in Baylis' application, which
 26

1 resulted in Copyright Registration No. PA0002432422, if known, would have caused the
2 Register of Copyrights to refuse registration. Valve further respectfully requests an
3 immediate stay of proceedings pending the referral to the Register and its determination
4 thereof.

5
6 *I certify that this memorandum contains 1,821 words, in compliance with the Local Civil*
7 *Rules.*

8 DATED: April 19, 2024.

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CERTIFICATE OF SERVICE

I hereby certify that on this date I caused true and correct copies of the foregoing document to be served upon the following, at the addresses stated below, via the method of service indicated.

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E-mail
U.S. Mail
E-filing

Dated this 19th day of April, 2024 in Seattle, Washington.

/s/ Kaila Greenberg
Kaila Greenberg
Legal Assistant